

APPEAL NO. 033008  
FILED JANUARY 6, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on October 29, 2003. The hearing officer resolved the disputed issues by deciding that the compensable injury of (date of injury for docket no. 1), does not include an injury to the cervical spine; that the compensable injury of (date of injury for docket no. 2), does not include an injury to the cervical spine; and that the compensable injury of (alleged date of injury), does not include an injury to the cervical spine. The (self-insured) was the carrier for (Docket No. 1) regarding the extent issue involving the compensable injury of (date of injury for docket no. 1). Insurance Company of the State of Pennsylvania (carrier 2) was the carrier in (Docket No. 2) regarding the extent issue involving the compensable injury of (date of injury for docket no. 2). Both extent issues regarding the compensable injuries of (date of injury for docket no. 1) and (date of injury for docket no. 2), were resolved by stipulation of the parties.

The extent issue regarding the (alleged date of injury), compensable injury was fully litigated at the CCH. The appellant (claimant) appealed the determination that the compensable injury of (alleged date of injury), did not include an injury to the cervical spine on grounds of sufficiency of the evidence. The claimant additionally appealed an evidentiary ruling and alleged that the hearing officer was biased. The respondent (carrier 3) responded, urging affirmance of both the evidentiary ruling and the challenged determination of the hearing officer.

DECISION

Affirmed.

The claimant asserts that the hearing officer committed harmful error in excluding Claimant's Exhibit Nos. 13 and 14. Carrier 3 objected to the admission of these documents at the CCH on the grounds that the documents had not been timely exchanged. Parties must exchange documentary evidence with each other not later than 15 days after the benefit review conference and thereafter, as it becomes available. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c) (Rule 142.13(c)). The claimant argued that the documents were exchanged as they became available. Our standard of review regarding the hearing officer's evidentiary rulings is one of abuse of discretion. Texas Workers' Compensation Commission Appeal No. 92165, decided June 5, 1992. To obtain reversal of a judgment based upon the hearing officer's abuse of discretion in the admission or exclusion of evidence, an appellant must first show that the admission or exclusion was in fact an abuse of discretion, and also that the error was reasonably calculated to cause and probably did cause the rendition of an improper judgment. Texas Workers' Compensation Commission Appeal No. 92241, decided July 24, 1992; see *also Hernandez v. Hernandez*, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). In determining whether there has been an abuse of discretion,

the Appeals Panel looks to see whether the hearing officer acted without reference to any guiding rules or principles. Texas Workers' Compensation Commission Appeal No. 951943, decided January 2, 1996; Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). It was a factual issue for the hearing officer to determine whether or not the documents were in fact timely exchanged, and, if not, if there was good cause for such failure. The hearing officer determined that the claimant did not have good cause for failing to timely exchange either document. The hearing officer noted that due diligence was not used to obtain the documents. We do not find the hearing officer's ruling to be an abuse of discretion, nor can we say that the hearing officer acted without reference to guiding rules and principles. Nor did the claimant establish that the evidentiary error he asserts probably caused the rendition of an improper judgment.

We have held that the question of the extent of an injury is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

In the present case, there was simply conflicting evidence, and it was the province of the hearing officer to resolve these conflicts. Applying the above standard of review, we find that the hearing officer's decision was sufficiently supported by the evidence in the record. Regarding the claimant's assertion of hearing officer bias, we find no evidence to substantiate this assertion.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **PACIFIC EMPLOYER'S INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MARCUS CHARLES MERRITT  
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 200  
IRVING, TEXAS 75063.**

---

Margaret L. Turner  
Appeals Judge

CONCUR:

---

Elaine M. Chaney  
Appeals Judge

---

Thomas A. Knapp  
Appeals Judge